

Assembly Bill No. 2262

Passed the Assembly August 30, 2008

Chief Clerk of the Assembly

Passed the Senate August 28, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1255.7 of the Health and Safety Code, and to amend Section 271.5 of the Penal Code, relating to child protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2262, Torrico. Child protection: safe surrender.

Existing law designates certain locations as safe-surrender sites for the safe surrender of newborn children who are 72 hours of age or younger.

This bill would expand the scope of those provisions to apply to children who are 7 days old or younger. The bill would permit a local fire agency, upon the approval of the appropriate local governing body of the agency, to designate a safe-surrender site. The bill would specify certain circumstances in which a safe-surrender site and its personnel have no liability for a surrendered child.

By imposing new duties on local officials, the bill would impose a state-mandated local program.

This bill would, by July 1, 2009, require the State Department of Social Services to convene a workgroup consisting of stakeholders, to determine the appropriate agencies to disseminate updated instructions to counties, as specified, and to identify the appropriate agencies to adopt rules and regulations the workgroup deems necessary for this purpose.

The bill would require the State Department of Social Services to enforce and administer the safe-surrender provisions, as specified, and to report to the Legislature regarding the effect of these provisions on or before January 1, 2012, and, contingent upon available funding or resources, on or before January 1 of each subsequent year.

The bill would specify that activities required by the bill shall be funded by moneys available from the State Children's Trust Fund and the California Children and Families Trust Fund, and would require the department to apply for that funding to the California Children and Families Commission. The bill would provide that General Fund moneys shall not be used to fund the

bill's provisions. The bill would authorize the State Department of Social Services to accept and expend other private funds from donations that are received by the department, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1255.7 of the Health and Safety Code is amended to read:

1255.7. (a) (1) For purposes of this section, "safe-surrender site" means any of the following:

(A) A location designated by the board of supervisors of a county or by a local fire agency, upon the approval of the appropriate local governing body of the agency, to be responsible for accepting physical custody of a minor child who is seven days old or younger from a parent or individual who has lawful custody of the child and who surrenders the child pursuant to Section 271.5 of the Penal Code. Before designating a location as a safe-surrender site pursuant to this subdivision, the designatory entity shall consult with the governing body of a city, if the site is within the city limits, and with representatives of any fire department, and any child welfare agency that may provide services to a child who is surrendered at the site, if that location is selected.

(B) A location within a public or private hospital that is designated by that hospital to be responsible for accepting physical custody of a minor child who is seven days old or younger from a parent or individual who has lawful custody of the child and who surrenders the child pursuant to Section 271.5 of the Penal Code.

(2) For purposes of this section, "parent" means a birth parent of a minor child who is seven days old or younger.

(3) For purposes of this section, "personnel" means any person who is an officer or employee of a safe-surrender site or who has staff privileges at the site.

(4) A hospital and any safe-surrender site designated by the county board of supervisors or by a local fire agency, upon the approval of the appropriate local governing body of the agency, shall post a sign utilizing a statewide logo that has been adopted by the State Department of Social Services that notifies the public of the location where a minor child seven days old or younger may be safely surrendered pursuant to this section.

(b) Any personnel on duty at a safe-surrender site shall accept physical custody of a minor child seven days old or younger pursuant to this section if a parent or other individual having lawful custody of the child voluntarily surrenders physical custody of the child to personnel who are on duty at the safe-surrender site. Safe-surrender site personnel shall ensure that a qualified person does all of the following:

(1) Places a coded, confidential ankle bracelet on the child.

(2) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a copy of a unique, coded, confidential ankle bracelet identification in order to facilitate reclaiming the child pursuant to subdivision (f). However, possession of the ankle bracelet identification, in and of itself, does not establish parentage or a right to custody of the child.

(3) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a medical information questionnaire, which may be declined, voluntarily filled out and returned at the time the child is surrendered, or later filled out and mailed in the envelope provided for this purpose. This medical information questionnaire shall not require any identifying information about the child or the parent or individual surrendering the child, other than the identification code provided in the ankle bracelet placed on the child. Every questionnaire provided pursuant to this section shall begin with the following notice in no less than 12-point type:

NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE THAT WE DON'T KNOW ABOUT TODAY. SOME ILLNESSES, INCLUDING CANCER, ARE BEST TREATED WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE

IN COMPLETING THIS QUESTIONNAIRE FULLY IS ESSENTIAL. THANK YOU.

(c) Personnel of a safe-surrender site that has physical custody of a minor child pursuant to this section shall ensure that a medical screening examination and any necessary medical care is provided to the minor child. Notwithstanding any other provision of law, the consent of the parent or other relative shall not be required to provide that care to the minor child.

(d) (1) As soon as possible, but in no event later than 48 hours after the physical custody of a child has been accepted pursuant to this section, personnel of the safe-surrender site that has physical custody of the child shall notify child protective services or a county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code, that the safe-surrender site has physical custody of the child pursuant to this section. In addition, any medical information pertinent to the child's health, including, but not limited to, information obtained pursuant to the medical information questionnaire described in paragraph (3) of subdivision (b) that has been received by or is in the possession of the safe-surrender site shall be provided to that child protective services or county agency.

(2) Any personal identifying information that pertains to a parent or individual who surrenders a child that is obtained pursuant to the medical information questionnaire is confidential and shall be exempt from disclosure by the child protective services or county agency under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Any personal identifying information that pertains to a parent or individual who surrenders a child shall be redacted from any medical information provided to child protective services or the county agency providing child welfare services.

(e) Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall assume temporary custody of the child pursuant to Section 300 of the Welfare and Institutions Code immediately upon receipt of notice under subdivision (d). Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately investigate the circumstances of the case and file a petition pursuant to Section 311 of the Welfare and

Institutions Code. Child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall immediately notify the State Department of Social Services of each child to whom this subdivision applies upon taking temporary custody of the child pursuant to Section 300 of the Welfare and Institutions Code. As soon as possible, but no later than 24 hours after temporary custody is assumed, child protective services or the county agency providing child welfare services pursuant to Section 16501 of the Welfare and Institutions Code shall report all known identifying information concerning the child, except personal identifying information pertaining to the parent or individual who surrendered the child, to the California Missing Children Clearinghouse and to the National Crime Information Center.

(f) If, prior to the filing of a petition under subdivision (e), a parent or individual who has voluntarily surrendered a child pursuant to this section requests that the safe-surrender site that has physical custody of the child pursuant to this section return the child and the safe-surrender site still has custody of the child, personnel of the safe-surrender site shall either return the child to the parent or individual or contact a child protective agency if any personnel at the safe-surrender site knows or reasonably suspects that the child has been the victim of child abuse or neglect. The voluntary surrender of a child pursuant to this section is not in and of itself a sufficient basis for reporting child abuse or neglect. The terms “child abuse,” “child protective agency,” “mandated reporter,” “neglect,” and “reasonably suspects” shall be given the same meanings as in Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.

(g) Subsequent to the filing of a petition under subdivision (e), if within 14 days of the voluntary surrender described in this section, the parent or individual who surrendered custody returns to claim physical custody of the child, the child welfare agency shall verify the identity of the parent or individual, conduct an assessment of his or her circumstances and ability to parent, and request that the juvenile court dismiss the petition for dependency and order the release of the child, if the child welfare agency determines that none of the conditions described in subdivisions (a) to (d), inclusive, of Section 319 of the Welfare and Institutions Code currently exist.

(h) (1) On or before July 1, 2009, the State Department of Social Services shall convene a workgroup consisting of stakeholders, including the State Department of Public Health, the State Department of Education, and any others deemed appropriate by the State Department of Social Services. The workgroup shall determine the appropriate agencies to disseminate updated instructions to counties that address the following issues:

(A) Clarification of rules with respect to a mother who gives birth in a hospital and chooses to give up her baby.

(B) Clarification of the definition of a safely surrendered baby, including whether the baby was safely surrendered in accordance with this section.

(C) Clarification of parental information provided to counties and the use of that information received by the counties.

(2) The workgroup shall identify the appropriate agencies that shall adopt all rules and regulations the workgroup deems necessary for this purpose. The responsibilities of the workgroup pursuant to this subdivision shall include, but not be limited to, identifying agencies that are responsible for ongoing research and monitoring effects.

(i) A safe-surrender site, or the personnel of a safe-surrender site, shall not have liability of any kind for a surrendered child prior to taking actual physical custody of the child. A safe-surrender site, or personnel of the safe-surrender site, that accepts custody of a surrendered child pursuant to this section shall not be subject to civil, criminal, or administrative liability for accepting the child and caring for the child in the good faith belief that action is required or authorized by this section, including, but not limited to, instances where the child is older than seven days or the parent or individual surrendering the child did not have lawful physical custody of the child. A safe-surrender site, or the personnel of a safe-surrender site, shall not be subject to civil, criminal, or administrative liability for a surrendered child prior to the time that the site or its personnel know, or should know, that the child has been surrendered. This subdivision does not confer immunity from liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

(j) (1) In order to encourage assistance to persons who voluntarily surrender physical custody of a child pursuant to this

section or Section 271.5 of the Penal Code, no person who, without compensation and in good faith, provides assistance for the purpose of effecting the safe surrender of a minor seven days old or younger shall be civilly liable for injury to or death of the minor child as a result of any of his or her acts or omissions. This immunity does not apply to any act or omission constituting gross negligence, recklessness, or willful misconduct.

(2) For purposes of this section, “assistance” means transporting the minor child to the safe-surrender site as a person with lawful custody, or transporting or accompanying the parent or person with lawful custody at the request of that parent or person to effect the safe surrender, or performing any other act in good faith for the purpose of effecting the safe surrender of the minor.

(k) For purposes of this section, “lawful custody” means physical custody of a minor seven days old or younger accepted by a person from a parent of the minor, who the person believes in good faith is the parent of the minor, with the specific intent and promise of effecting the safe surrender of the minor.

(l) Any identifying information that pertains to a parent or individual who surrenders a child pursuant to this section, that is obtained as a result of the questionnaire described in paragraph (3) of subdivision (b) or in any other manner, is confidential, shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be disclosed by any personnel of a safe-surrender site that accepts custody of a child pursuant to this section.

(m) The activities required by this section shall be funded by available moneys from the Children’s Trust Fund, established pursuant to Section 18969 of the Welfare and Institutions Code, and from the California Children and Families Trust Fund, established pursuant to Section 130105. The State Department of Social Services shall apply to the California Children and Families Commission for funding. General Fund moneys shall not be used to fund this section. The department may also accept and expend private donations that are received by the department for the purposes of this section.

SEC. 2. Section 271.5 of the Penal Code is amended to read:

271.5. (a) No parent or other individual having lawful custody of a minor child seven days old or younger may be prosecuted for

a violation of Section 270, 270.5, 271, or 271a if he or she voluntarily surrenders physical custody of the child to personnel on duty at a safe-surrender site.

(b) For purposes of this section, “safe-surrender site” has the same meaning as defined in paragraph (1) of subdivision (a) of Section 1255.7 of the Health and Safety Code.

(c) (1) For purposes of this section, “lawful custody” has the same meaning as defined in subdivision (j) of Section 1255.7 of the Health and Safety Code.

(2) For purposes of this section, “personnel” has the same meaning as defined in paragraph (3) of subdivision (a) of Section 1255.7 of the Health and Safety Code.

SEC. 3. On or before January 1, 2012, and, contingent upon availability of sufficient funding or resources for this purpose, on or before January 1 of each subsequent year, the State Department of Social Services shall report to the Legislature regarding the effect of this act, including, but not limited to, all of the following information:

(a) The number of children one year of age or younger who are found abandoned, dead or alive, in the state for each year in which reporting is required under this act.

(b) The number of infants surrendered pursuant to this act, with their approximate age.

(c) The number of medical history questionnaires completed in those cases.

(d) The number of instances in which a parent or other person having lawful custody seeks to reclaim custody of a surrendered child, both during and after the initial period following surrender, and the outcome of those cases.

(e) Whether a person seeking to reclaim custody is the individual who surrendered the child.

(f) The number of children surrendered pursuant to this act who show signs of neglect or abuse and the disposition of those cases.

(g) The number of parents or legal guardians eventually located and contacted by social workers.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2008

Governor